

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00180-16
45-003-17-1-5-00789-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-481-014.000-003
Assessment Years: 2013 & 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2017 assessments of his property located at 4709 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$1,400 for 2013¹ and \$1,200 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On January 7, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officer, Robert W. Metz. Both were sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	GIS map of the subject area ²
Petitioner Exhibit B:	GIS map of the subject parcel
Petitioner Exhibit C:	Property record card for 2010-2013

¹ Petitioner’s Exhibit C (2013 PRC) reflects a value of \$2,200 for 2013. The Board notes that the PTABOA issued its 115 determining the value for 2013 to be \$1,400. The PTABOA’s determination is the beginning value for this appeal.

² Nowacki requested Petitioner’s Exhibit A be used for three other parcels that were appealed and heard on this day. He stated the four lots were “adjacent”, and that the subject lot for this matter actually appears on the map. He provided only one copy of the exhibit for the four hearings. The only copy of Exhibit A can be found in the file for Petition No. 45-003-13-1-5-00177-16 (4703 W. 28th Avenue, Gary).

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.³

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. The property's assessment decreased from 2012 to 2013. There was no change from 2016 to 2017. Nowacki therefore bears the burden of proof for both years.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
- a. Nowacki contends the property record card shows the topography of the property is low, meaning it is susceptible to flooding or high water. The property record card also shows the property has utilities and paved streets and roads. Nowacki contends the streets are non-existent and utilities are not available. Furthermore, the property record card shows the neighborhood life cycle as static. The significant decrease in the assessed value from \$3,600 in 2010 to \$1,200 in 2017 indicates the neighborhood is not static. *Nowacki testimony; Pet'r Exs. A-D.*
 - b. Nowacki alleges the Auditor had the property on its rolls for 40 years. Nowacki purchased it for the minimum bid at an auction attended by hundreds of eligible bidders in 2009. None of the bidders offered the value the Assessor placed on the property. *Nowacki testimony.*
 - c. Nowacki contends a reasonable assessed valuation for the property is \$500 for both 2013 and 2017. Alternatively, he argues that the 2013 assessment should be lowered to the 2017 value of \$1,200. Even though that is still too high, it would offer some relief. *Nowacki testimony.*
9. The Assessor's case:

³ The Assessor offered no exhibits.

- a. The Assessor contends Nowacki offered no substantial evidence to support his requested valuation and recommends no change to the assessments. *Metz testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2017 assessments. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation dates for the years under appeal were March 1, 2013 and January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the property's 2013 and 2017 assessments should be \$500. He further argued that the 2013 assessment should be reduced to the value of \$1,200 consistent with 2017. He stated that a value of \$1,200 would provide some relief. Nowacki failed to present any probative market-based evidence to support those values. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. We also give no weight to his claims regarding the property's decreasing assessment. Nowacki pointed out that the assessed value for the property had decreased over time, but he did not use the information to develop a proposed market value-in-use.

- e. Nowacki contends the characteristics of the property are incorrect on the property record card. Nowacki did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling*, 841 N.E.2d at 678.
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013 or 2017, he failed to make a prima facie case for a lower assessment for either year. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 and 2017 assessments.

ISSUED: March 7, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.